128 (1)

Supreme Court, U.S.
FILED
081408 MAY 11 2009
OFFICE OF THE CLERK

No. _____

In the

Supreme Court of the United States

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BOGDAN OSTROWSKI

Petitioner,

v.

THE CITY OF NEW YORK, THE POLICE DEPARTMENT OF THE CITY OF NEW YORK and THOMAS M. PRASSO,

Respondents.

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On Petition For Writ OF Certiorari To The Court Of Appeals of the State of New York

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PETITION FOR A WRIT OF CERTIORARI

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Bogdan Ostrowski
Petitioner Pro Se
P.O. Box 21003
Brooklyn, New York 11202
(917) 209-7493

QUESTIONS PRESENTED

1. Why, Courts of the State of New York: Appeals and Appellate Division, First Department denied Petitioner's request to returned his firearms and failed to **protect and guard Petitioner's CONSTITUTIONAL, THE SECOND AMENDMENT RIGHTS** to keep and own guns for self-defense and hunting, specifically, when Petitioner never was a criminal, his firearms never were involved in any incident and he never violates any rules, regulations and law?
2. Why, Courts of the State of New York: Appeals and Appellate Division, First Department denied Petitioner's request to returned his firearms and failed to respect and to enforce the Criminal Procedure Law §170.55. Adjournment in contemplation of dismissal, paragraph (8)? This provision of law states clearly and should be respected by everyone:

   *"The granting of an adjournment in contemplation of dismissal **shall not be** deemed to be a conviction or an admission of guilt. **No person shall suffer** any disability or forfeiture as a result of such order. Upon the dismissal of the accusatory instrument pursuant to this section, **the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to status he occupied before his arrest and prosecution."***

PARTIES TO THE PROCEEDING

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Appendix 1: State of New York Court's of Appeals Order denying Petitioner's motion for leave to the Court of Appeals, February 11, 2009.

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Appendix 8: New York Police Department Property Clerk's Invoice indicating that Petitioner's fire arms were NOT involved with the case, February 24, 2005.

Appendix 9: Police Department of the City of New York, License Division's the Letter advising that Petitioner's license and permit are suspended as a result of Petitioner's arrest, dated February 23, 2005.

Appendix 11: New York State Department of Environmental Conservation, Hunter Education Certificate of Qualification, August 22, 2004.

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STATEMENT OF JURISDICTION

The State of New York Court of Appeals issued the Order and denied Petitioner's motion for leave to the Court of Appeals, February 11, 2009. (App. 1). No motion for rehearing was filed. The Supreme Court possesses jurisdiction to review lower Court Order and Decisions under 28 U.S.C. § 1257(a) because this

Petition for Writ of Certiorari was filed within ninety (90) days following the issuance.

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CONSTITUTIONAL PROVISIONS & STATUES INVOLVED

U.S. Const. amend. II and New York State CPLR § 170.55(8), CPLR 7803.

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STATEMENT OF THE CASE

Petitioner is fighting back for his HONOR, his NAME and his CIVIL RIGHTS, respectfully requesting the Honorable, Supreme Court of the United States to grant and reinstate his fire arms licenses, in its entirety.

The case is an Honorable case specifically, when Petitioner is totally innocent and never was convicted for anything in his life whatsoever and his fire arms never were involved in any incident.

The New York State Courts were misled by Respondent's Corporation of Attorneys manipulations and by their arbitrary, capricious and malicious activities on the base of false statements and acquisitions of NYPD Licensing Division's Hearing Officer's Arlynne Lowell Recommendation, dated February 8, 2007, unlawfully challenging investigation in a bad faith of the sealed already case in July 2006 totally not related to Petitioner's fire arms were highly improper.

False statements and poor judgments were arbitrary without the grounds and without regards to the facts and law.

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REASONS FOR GRANTING WRIT

Petitioner Bogdan Ostrowski seek this Court's review of the Decisions by the State of New York Court of Appeals (App. 1) and lower Courts (App. 2, 3, 4, 5), respectfully showing:

I. Introduction

The questions posed by this Petition is, in an admiralty case, when Respondents Attorneys working fraudulently in a bad faith were misleading the Courts, manipulating with the facts and law, taking advantage over Petitioner proceeding Pro Se, when Respondent was abusing his power and Authority by Official misconduct and Courts discretions were incorrect without deep analysis of facts and investigation, and on the base of the false statements, acquisitions and opinions only, completely excluding Petitioner's rigid facts and his Civil Record.

Petitioner's request to return his pistol and rifle permits becomes a classic case of deprive of Petitioner's GOOD NAME and CONSTITUTIONAL CIVIL RIGHTS.

False statements and poor judgments were arbitrary without grounds and without regard to the facts and law. Orders and Law did not match in New York State Courts and judicial intervention of the

United States Supreme Court is needed in the Name of Justice.

II. Factual Background

PETITIONER is 51 years old and always had has perfect RECORD. He is professional and good Citizen with engineering degree. Most of his life Petitioner worked and served for Government. He was lieutenant in Polish Air Force for 16 years. He was Inspector in NYC Department of Building having special patrolman license. He worked in NYC Transit Authority and now is working in the Port Authority of New York and New Jersey, proudly supporting the Port Authority Police including their computerized shooting range and most advanced security systems complying with all extensive public safety background checks.

Petitioner always was a gentleman with professional and high ethical manner. He was example for his family as a father, husband and good Citizen. Life principles as Honor, God, Country and family values always matter to him. He never drinks smoke, never used drugs. He was working very hard for his family and raised his children with the same way.

In November 2004, Petitioner was surprised by filing by his wife divorce case. Petitioner's wife was represented by the selfish, scamming Artist and Predator, Attorney Randy Schustal from Cantor, Coscia, Schustal L.LC, which was using all available resources to damage Petitioner's Name and fraudulently remove Appellant from his own House, remove his name even from the deeds of his house and completely isolate him from his children to take total

control and advantage in divorced case for personal benefits.

Attorney Schustal to remove Petitioner from the house was using Petitioner's daughter Anna (18 in 2004) and supervised her to file and sign false complaints leading to two Petitioner's false, ridiculous arrests in February 23, 2005 and June 27, 2005. Anna took advantage of crisis in marriage since September 2004. She was skipping school and socializes with a bad friends staying frequently in the bars and few times overnight was out of the house. Communication with ANNA became very difficult. For Petitioner as a father that was alarming situation to protect his daughter but nothing works. Her answer was "I am 18 and I can do what I want".

On February 21, 2005, Monday (President Day) about 6PM (after dark) Anna was ready to go out again refusing to say where she is going and refusing to study for incoming medical exam in Hunter College. Then Petitioner took away cellular phone from Anna and said that she will get it back after she will take a medical exam on March 5, 2005. Entire incident was recorded by digital video recorder installed in the House and was rejected to review by Courts. Then she was very upset of loosing for two weeks communication with friends and then she was used by Attorney Schustal to make first irresponsible complaint leading to first arrest on February 23, 2005 to remove Petitioner's from the house to take advantage in divorce case and Petitioner's trouble starts here. Petitioner was mischaracterized and his name was damaged enough for the first time in his life by false statements to make easy arrest with false descriptions of the facts by New York Police Department Police Officer CAMERON A. MITCHELL, Shield No. 3720, dishonoring the

NYPD's badge and sworn Oath, completely ignoring Petitioner's explanation.

The letter was send to Petitioner from NYPD License Division, dated February 23, 2005 (the same day as arrest) to return to New York Police Department (NYPD) Petitioner's firearms and permits (App. 9).

On February 24, 2005 Petitioner returned his firearms and permits to NYPD 61Pct. and received copy of NYPD Property Clerk's Invoice indicating that Petitioner's fire arms were NOT involved with the case. (App. 8). Since first arrest Petitioner was represented by Legal Aid Attorney Mr. Boggs, which responded to all NYPD License Division concerns.

Petitioner's daughter, Anna never appeared in any Court being terribly misguided by her mother and completely shut down by the dirty operations of the evil mother Attorney Schustal's supervision.

In June 2005 was clear that the case is going to dismiss, but Attorney Schustal did not want that Petitioner came back to the House the central issue in the divorce case of approximately $1,000,000.00 in value and Anna was directed to file the next false complaint, just to keep Petitioner away from his house at this time.

On June 27, 2005 the second more ridiculous was made by the same New York Police Department Police Officer CAMERON A. MITCHELL, Shield No. 3720 with another totally false complaint that Petitioner met her in some phony location and tried to talk to her and she was thinking that her father broke the order of protection. That was next shocking, outrageous complaint and nothing was done by Attorneys to prevent that. Petitioner's situation became very serious.

On July 13, 2005 the case was adjourned and dismissed, sealed and destroyed on July 14, 2006.

Mean time Petitioner's fire arms permits were revoked and on January 24, 2007 the hearing was scheduled with Hearing Officer Lowell to return to Petitioner his firearms permits. At that hearing, Officer Lowell was conducting malicious prosecution, manipulating with the facts related to false arrests and complaints of the dismissed, sealed and destroyed case already on July 14, 2006 and completely ignored Petitioner's explanations and circumstances totally not related to Petitioner's fire arms. Her Recommendation, dated February 8, 2007 was wrong, unacceptable, falsely and intentionally pointing Petitioner's character in a bad faith and false arrests by P.O. DT 3 CAMERON A. MITCHELL, Shield No. 3720 never were investigated by Officials.

Above not verified recommendation with errors, false statements, false acquisitions and false arrests was approved by the Director of the NYPD License Division, directing Petitioner to file Petition under Article 78 to seek relief from his decision and Petitioner started very difficult and long recovery process facing abusive Attorneys representing Respondent.

On June 15, 2007 was filed Article 78 Petition by Petitioner's Attorney Nicolson to Supreme Court of the State of New York - New York County to reinstate Petitioner's fire arms permit and Judge Edmead was assigned to the case. The Petition was denied by her on October 3, 2007 without opportunity for trial or hearing. (App. 5).

Petitioner's Attorney Nicholson was immediately discharged for misconduct and Petitioner was proceeding Pro Se since that.

Petitioner filed Order to Show Cause, dated October 27, 2007 to reargue and reverse the Order, dated October 3, 2007, which also was denied on November 27, 2007 by Judge Edmead (App. 4).

Judge Carol Edmead representing the Supreme Court of the State of New York; the County of New York erred twice denying original Notice of Petition filed by Petitioner's former Attorney Nicholson and denying Petitioner's (Pro Se), the Order to Show Cause to reargue the ORDER and DECISION to reinstate and restore to Petitioner his gun, rifle and shotgun, residence licenses surrendered by NYPD.

Judge Carol Edmead for unknown reason was unable to enforce and respect CRIMINAL PROCEDURE LAW, Rule §170.55(8):

> *"The granting of an adjournment in contemplation of dismissal shall not be deemed to be a conviction or an admission of guilt. No person shall suffer any disability or forfeiture as a result of such order. Upon the dismissal of the accusatory instrument pursuant to this section, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to status he occupied before his arrest and prosecution"*

and did not respect Petitioner's Civil RECORD, his Rights and IGNORED all of his facts and arguments and intentionally was avoiding Petitioner's testimony in the Court.

CPLR 7803 states clear that an action is arbitrary and capricious, or abuse of discretion, when the action is taken "without sound basis in reason and....without regard to the facts.

Matter of Pell v.Board of Education, 34N.Y.2d 222, 231(1974). Rationality is the key in determining whether an action is arbitrary and capricious or an abusive of discretion.

The lower Court's determination by Judge Edmead was incorrect and irrational because the License Division determination and Respondent's response were wrong without basis and without regards to the facts and the Judge completely ignored Petitioner's rigid facts, when Petitioner's fire arms never were an issue.

Petitioner believes that Judge Carroll Edmead denying Petitioner's request to reinstate his fire arms was under strong influence of the Respondent's positions indicated in the case caption and set by former Petitioner's Attorney Nicholson, which is completely unacceptable and definitely not rational specifically, when Petitioner was providing clear evidences that ridiculous arrests were made in a bad faith and Respondent was continue malicious prosecution.

Petitioner appealed denying Orders by Judge Carol Edmead to Supreme Court of the State of New York Appellate Division: First Judicial Department and Order, dated October 28, 2008 also denied Petitioner request to reinstate and restore petitioner's premises residence pistol license and rifle/shotgun permit.

Petitioner disagreed with the Supreme Court of the State of New York Appellate Division: First Judicial Department discretion because of negligence without regards to facts, acting exactly with the same way as lower Court.

Court's referrals to Petitioner's character were false in reference to completely different matter and circumstances, when Petitioner always performed

with professional and ethical manner, specifically caring of his family, children education and their preparation to adult's life.

Petitioner's character is to fight for his good NAME, his RIGHTS and JUSTICE on the base of truth and facts.

The Supreme Court of the State of New York, Appellate Division, First Department denied Appellant's request to return his firearms on the base of Respondent's misleading, wrong and false statement that Appellant did not report any of these incidents immediately to the Licensing Division, which again were referred to completely different matter and circumstances and was totally untrue:

> *"..... Furthermore, the record shows that Petitioner failed to report any of these incidents immediately to the License Division (see 38 RCNY 5-22 [cl [1l; 38 RCNY 5-30 [c][1], [5]; 38 RCNY 3-05), and his alleged unawareness of the responsibility to do so is no excuse (see Matter of Cohen v Kelly, 30 AD3d 170 [2006]...,*

when Appellant is extremely responsible person and Citizen; when Appellant immediately return his firearms and permits as ordered; when Appellant was represented by Legal Aid Attorney Mr. Boggs; when Attorney Boggs was informed immediately about the letter from Licensing Division, dated February 23, 2005 (App. 9, the same date as the arrest) and that letter was immediately forward to him for further proceedings with Licensing Division on the Petitioner's behalf?

Petitioner again having no choice and appealed denying Order to the State of New York Court of

Appeals and again his request was easily denied on February 11, 2009 (App. 1), just to keep better statistic and tolerating arbitrary, capricious and malicious activities everyone involved in this case, specifically Respondent's action against Petitioner in abusive manner by assigned Attorneys Louise Lippin, Lindsey Snell, Francis Caputo and Dona Morris under superior Attorney Michael A. Cardozo, Corporation Counsel of the City of New York taking advantage over Petitioner and manipulating even more with the facts and the case, on the basis of signed by Director of the Licensing Division's Mr. Prasso not verified with errors, false statements and false acquisitions, indicated in the Report and Recommendation by Hearing Officer Arlynne Lowell Esq.; when everyone were misleading the Courts and all Appellant's requests for testimony of his daughter, to schedule appointments to discuss the case were rejected and all statements were arbitrary without grounds and without regards to the facts and law, CPLR 7803 *and* CPLR 170.55.(8); when Petitioner was in pending divorce case and demands for his arrests were needed by the Master of manipulation Attorney Schustal to keep Petitioner away from the House and to take total control over the House; when the case was finally dismissed, sealed and destroyed already on July 14, 2006 and NYPD License Division's Hearing Officer Arlenne Lowell Esq. was still conducting and continuing on her own, malicious prosecution and was making later unacceptable Recommendation, dated February 8, 2007.

Petitioner was completely disrespected and did not have chance to protect and guard his CONSTITUTIONAL, THE SECOND AMENDMENT RIGHTS to keep and own guns for self-defense and hunting, specifically, when Petitioner never was a

criminal, never admitted guilt, never was convicted for anything, never harmed anybody and FBI RAP Sheet, dated September 6, 2007 clearly indicated Petitioner's Civil Record as NULL (App. 7), when his firearms never were involved in incident indicating in the NYPD Property Clerk's Invoice, dated February 24, 2005 (App. 8), when Petitioner posses the valid Hunter license (App. 11), when his rigid facts and evidence including Petitioner's video recording never was investigated by District Attorney's Office; when Appellant's daughter never appeared to the Courts and District Attorney's Office did not ensure any investigation in that matter.

The historic gun rights by recent SUPREME COURT OF THE UNITED STATES in the case No. 07-290, DISTRICT OF COLUMBIA ET AL. v. HELLER by ORDER and DECISION, dated June 26, 2008 invalidating a District of Columbia handgun ban was also not respected in the New York State Courts.

In a statement, the White House said: "The president strongly agrees with the Supreme Court's historic decision today that the Second Amendment protects the individual right of Americans to keep and bear arms. This has been the administration's long-held view. The president is also pleased that the Court concluded that the D.C. firearm laws violate that right."

Petitioner strongly agreed with the President's of the United States of America statement and is expecting proper ruling specifically, when Highest Court affirms gun rights in historic decision, dated June 26, 2008.

III. Conclusion and Prayer for Relief

The petition for a writ of certiorari should be granted.

Dated: May 9, 2009

Respectfully submitted

Bogdan Ostrowski
Petitioner Pro Se
P.O. Box 21003
Brooklyn, New York 11202
(917) 209-7493

Mo. No. 2008 – 1351

State of New York Court of Appeals
At a session of the Court, held at Court of Appeals Hall in the City of Albany on the eleventh day of February, 2009

In the Matter of Bogdan Ostrowski,
Appellant,

v.

The City of New York, et al.,
Respondents.

Present, Hon. CARMEN BEAUCHAMP CIPARICK, Acting Chief Judge, **presiding.**

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is ORDERED, that the said motion be and the same hereby is denied.

Stuart M. Cohen
Clerk of the Court

Index No: 108388 / 07

Supreme Court's of the State of New York Appellate Division: First Judicial Department

Bogdan Ostrowski,

Petitioner-Appellant,

-against-

The City of New York, et al.,

Respondents-Respondents.

Oct. 28, 2008

Bogdan Ostrowski, appellant Pro Se

Michael A. Cardozo, Corporation Counsel, New York (Dona B. Morris of counsel), for respondent.

Justices: Tom, J.P., Saxe, Williams, Catterson, Moskowitz, JJ.

Order, Supreme Court, New York County (Carol R. Edmead, J.), entered October 5, 2007, which denied and dismissed the petition brought pursuant to CPLR article 78 seeking to compel respondents to reinstate and restore petitioner's premises residence pistol license and rifle/shotgun permit, unanimously affirmed, without costs.

The determination to revoke petitioner's pistol license and rifle/shotgun permit was not arbitrary and capricious, and had a rational basis. Petitioner's arrests cast doubt on his character and fitness to possess a firearm (see of Papaioannou v Kelly, 14

AD3d 459 [2005]), as did the orders of protection issued against him and his violation of such orders. Although the charges against petitioner were adjourned in contemplation of dismissal, the circumstances surrounding the matters were appropriately considered (see *Matter of Servedio v Bratton, 268 AD2d 356 [2000]).* Furthermore, the record shows that petitioner failed to report any of these incidents immediately to the License Division (see 38 RCNY 5-22 (c) (1); 38 RCNY 5-30 (c) (1), (5); 38 RCNY 3-5), and his alleged unawareness of the responsibility to do so is no excuse (see *Matter of Cohen v Kelly, 30* AD3d 170 [2006]).

We have considered petitioner's remaining contentions and find them unavailing.

This constitutes the decision and order of the Supreme Court, Appellate Division, First Department.

Index No: 108388 / 07

Supreme Court's of the State of New York Appellate Division: First Judicial Department – New York County

Bogdan Ostrowski,

Appellant,

v.

The City of New York, et al.,

Respondents.

Nov. 27, 2007

Justice: CAROL EDMEAD, part 35.

Reargument denied.

Filed Dec. 06, 2007, New York County Clerk's Office.

Index No: 108388 / 07
Article 78

Supreme Court's of the State of New York Appellate Division: First Judicial Department – New York County

Bogdan Ostrowski,

Appellant,

v.

The City of New York, et al.,

Respondents.

Oct. 03, 2007

Justice: CAROL EDMEAD, part 35.

ORDERED, that the application of Petitioner Bogdan Ostrowski for a final Judgment, pursuant to CPLR Article 78, compeling respondents The City of New York, The Police Department of the City of New York and Thomas Praso to reinstate and restore to the petitioner's premises residence license petitioner's rifle and shotgun permit and petitioner's pistol surrendered to respondents, as demanded in the Petition, is denied in its entirety, and the Petition is dismissed. It is further ORDERED that counsel for respondents shall serve a copy of this order with notice of entry within twenty days of entry on counsel for petitioner.

Filed October 05, 2007, New York County Clerk's Office.

App. 6

Certificate of Disposition No: 141732, 141733
Docket No: 2005KN 041506, 2005KN011437

Criminal Court of the City of New York, County of Kings

The People of the State of New York
v.
Bogdan Ostrowski
Defendant

JULY 14, 2006

Justice: Cyrulnik, M.

Case Disposition Information:
07/14/2005, Adjourned, CPL Section 170.55
07/13/2006, Dismissed, CPL Section 170.55

Pursuant to Sec.160.50 of the CPL - **SEALED**

App. 7

FBI RAP Sheet, date printed: 09/06/2007

Case Number: ASCFP03316705
Name: Ostrowski Bogdan
SSN: 073780049
Date of Birth: 05/26/1957
Civil Record: null

CIVIL APPLICANT RESPONSE

ICN E20072530000000025662 CIDN OCA
ASCFP03316705
OSTROWSKI, BOGDAN W507 1957/05/26
MNU SOC 703780049 sex M
FPC
HENRY CLASS API
USTSAONFZ TSA-NON FED DATE FP
ARLINGTON VA 2007/09/06

A SEARCH OF THE FINGERPRINTS ON THE ABOVE INDIVIDUAL HAS REVEALED NO PRIOR ARREST

DATA CJIS DIVISION
2007/09/10 FEDERAL BUREAU OF INVESTIGATION

App. 8

New York Police Department 061 PCT.
Property Clerk's Invoice No: M 516771
Category: Other – safekeeping
Arresting/Assigned Officer – MIRANDA, DANIEL;
Rank – PO; Shield No: 22227; Tax Reg. No: 934001;
Command – 061

Item No: 01; Quantity 01; Article – KAHR MK40
HA1085 Caliber 40 S&W

Item No: 02; Quantity 01; Article – BROWNING
SAFARI CALIBER .308 w/Scope Support, Win Serial
311MM32132
..Above is complete list of property vouchered..

REMARKS:
Above property vouchered for safekeeping pistol Lic.
#2001000486 & Shotgun Rifle Lic. #2000900541. **As per family Court ORDER property weapon was not involved with case.** Do not return until notify by C.O. of Lic. Div. Security envelope #D808043

Police Department of the City of New York
License Division
1Police Plaza, Room 152
New York, NY 10038
Re: 2001000486
02/23/05

Dear:
Mr. Bogdan Ostrowski
1126 Banner Avenue
Brooklyn, NY 11235

This letter is to advise you that your license and permit are suspended as a result **OF YOUR ARREST.**

YOU ARE HEREBY DIRECTED TO IMMEDIATELY:

1. Surrender any and all firearms at your local Precinct pending the conclusion of the investigation of the above incident by the License Division.
2. Forward your license and/or permit to the License Division at the above address
3. Forward a copy of the Property Clerk's Invoice showing surrender of the firearms to the License Division at the above address.
4. Forward a notarized letter to the License Division at above address explaining the facts and circumstances surrounding your incident.

5. Telephone and speak with the investigator named below who is assigned to your case.
6. If you were arrested, you must forward proof that the criminal charges have been terminated (an original Certificate of Disposition from the court or a letter from the District Attorney declining prosecution). If applicable, you must also forward a Certificate from Disability.

The License Division will conduct an investigation into the facts and circumstances of the incident. The Commanding Officer of the Licensing Division will make a determination as to whether your License, Permit and/or Special Patrolman's designation will be continued, suspended, or revoked based upon the results of the investigation. You will be notified in writing of the results of that determination. The investigator assigned to your case is Police Officer Levine, who can be reached at (646) 610-6545.
POSSESSION OF AN UNLICENSED FIREARM IS A CRIME. FAILURE TO COMPLY WITH ANY OF THE ABOVE-MENTIONED DIRECTIVES MAY RESULT IN YOUR ARREST AND/OR PERMANENT REVOCATION OF YOUR LICENSE.
Sincerely,
Roy T. Richter
Deputy Inspector

App. 11

New York State Department of Environmental Conservation.

Hunter Education Certificate of Qualification
No. HC 002808

Student Name: Bogdan Ostrowski
Date Certified: August 22, 2004.